

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA

v.

DZHOKHAR TSARNAEV

No. 13-CR-10200-GAO

ASSENTED-TO MOTION FOR COPY OF SEALED ORDERS

Defendant-Appellant, Dzhokhar Tsarnaev, by and through counsel, and pursuant to the Fifth and Sixth Amendments to the United States Constitution, respectfully moves this Court to provide a copy of the following sealed Orders so that his counsel may compile and review a full record on appeal:

The following grounds are asserted in support of this motion:

1. A complete and accurate record, essential in any appeal, is especially crucial in a capital case as a critical “safeguard against arbitrariness and caprice.” *Dobbs v. Zant*, 506 U.S. 357, 358 (1993) (quoting *Gregg v. Georgia*, 428 U.S. 153, 167 (1976)).

2. A number of sealed orders were issued by both the Magistrate Judge and this Court. It is counsel’s understanding that it was the practice of the Clerk’s office to provide a copy of such orders to counsel below by hand, or, where they were electronic orders, by an electronic notification. Counsel for Defendant-Appellant have located the vast majority of these orders (182 of 202 sealed Orders); however, despite repeated efforts, counsel have not been able to locate a copy of 20 of these sealed Orders, and, therefore, ask that the Court provide a copy both of the electronic orders and any attached documents.

3. The Orders requested, listed by docket entry number and date, where available, are:

	DE 22	Sealed Defense Ex Parte Electronic Order
	DE 24	Sealed Defense Ex Parte Order
5/20/13	DE 45	Sealed Defense Ex Parte Order
	DE 57	Sealed Defense Ex Parte Order
	DE 72	Sealed Defense Ex Parte Order
	DE 75	Sealed Defense Ex Parte Order
	DE 78	Sealed Defense Ex Parte Order
	DE 79	Sealed Defense Ex Parte Order
	DE 82	Sealed Defense Ex Parte Order
8/19/13	No DE	Sealed Defense Ex Parte Electronic Order
	DE 85	Sealed Defense Ex Parte Order
	DE 86	Sealed Defense Ex Parte Order
	DE 87	Sealed Defense Ex Parte Order
	DE 88	Sealed Defense Ex Parte Order
3/26/14	DE 228	Sealed Defense Ex Parte Order
8/11/14	DE 467	Sealed Order
8/11/14	DE 468	Sealed Order
1/2/15	DE 888	Sealed Electronic Order
5/1/15	DE 1365	Sealed Defense Ex Parte Order
10/8/15	DE 1554	Sealed Defense Ex Parte Order

4. Seventeen of the 20 requested Orders were issued ex parte to the defense, and thus, a copy should be provided, at this stage of the proceedings, only to counsel for Defendant-Appellant. The remaining three Orders (DEs 467, 468, and 888) were issued under seal to both parties; appellate counsel for neither party have been able to locate a copy of these three sealed orders. Accordingly, undersigned counsel respectfully requests that a copy of DEs 467, 468 and 888 be provided to counsel for both parties.

5. Undersigned counsel have conferred with counsel for the government, who stated that the government consents to this motion.

Conclusion

Based on the foregoing, counsel for Defendant-Appellant requests that this Court disclose a copy of the 20 listed sealed orders to counsel for Defendant-Appellant and a copy of the 3 sealed orders at DEs 467, 468, and 888 to counsel for the government.

Respectfully submitted,

DZHOKHAR TSARNAEV

by his attorneys

/s/ David Patton

David Patton, Esq. (NY Bar # 3926813)

Federal Defenders of New York, Inc.

52 Duane Street, 10th Floor

New York, NY 10007

(212) 417-8700

DAVID_PATTON@FD.ORG

Judy Clarke, Esq. (CA Bar # 76071)

CLARKE & RICE, APC

1010 Second Avenue, Suite 1800

San Diego, CA 92101

(619) 308-8484

JUDYCLARKE@JCSRLAW.NET

CERTIFICATE OF SERVICE

I certify that the attached Assented-to Motion for Copy of Sealed Orders was filed electronically through the ECF system for the District of Massachusetts, which will send electronic notice to counsel of record for all parties on this the 6th day of January 2017, including the following:

Aloke Chakravarty, Esq.
U.S. Attorney's Office
1 Courthouse Way
Suite 9200
Boston, MA 02210
Aloke.Chakravarty@usdoj.gov

/s/ David Patton
David Patton, Esq. (NY Bar # 3926813)
Federal Defenders of New York, Inc.
52 Duane Street, 10th Floor
New York, NY 10007
(212) 417-8700
DAVID_PATTON@FD.ORG